

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.547 OF 2005
(For Leave to Appeal)

The State of Maharashtra

vs.

Damodar Gangaram Gaikwad & anr.

Applicant

Respondents

Ms.V.R.Bhonsale, Additional Public Prosecutor for the
State.

**CORAM : R. M. LODHA &
R. S. MOHITE, JJ.**

DATED : 21st February 2005

P.C.

At the outset, Ms.V.R.Bhonsale, the learned Additional Public Prosecutor informed us that the original accused no.1 Damodar Gangaram Gaikwad has since been arrested and he is in jail. Be that as it may, as regards original accused no.1, we have already ordered his name to be deleted from array of parties by our order dated 07.02.2005. It was so because the original accused no.1 is yet to face the trial.

2. In so far as the original accused no.2 Ujawala Ratan Zende is concerned, by judgment dated 05.07.2004 passed by the IIIrd Adhoc Assistant Sessions Judge, Kolhapur in Sessions Case No.238/2001, he has been acquitted.

3. The learned Additional Public Prosecutor could not show any evidence that the original accused no.2

instigated the original accused no.1. As a matter of fact, there is nothing in the prosecution evidence that connects the original accused no.2 with the crime punishable under Sections 307, 201 read with section 34 of IPC. The learned trial Judge has extensively considered the evidence and acquitted the original accused no.2. The view of the learned trial Judge is possible view warranting no interference by us.

4. Criminal application for leave to appeal is, accordingly, rejected. Suffice it to say that the acquittal of original accused no.2 shall neither affect nor influence the trial against the original accused no.1.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)